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Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Comments on Docket No. OP-1788, Proposed Guidelines for Evaluating Account and Services Requests

Dear Secretary Misback:

Thank you for the opportunity to comment on the Federal Reserve Board's proposed amendments to its Guidelines for Evaluating Account and Services Requests. The proposal to publish a periodic list of depository institutions with access to Federal Reserve Bank accounts and services is an important step toward greater transparency.

By way of introduction, I am the Alton & Cecile Cunningham Craig Professor of Law at the University of Alabama. My area of expertise is banking law. Part of my research focuses on Federal Reserve accounts. Of course, the perspectives expressed here are my own and not necessarily reflective of anyone in the broader University of Alabama community.

As I am sure you are aware, after the Federal Reserve Board's proposal, Congress passed legislation requiring that the Federal Reserve provide disclosures related to accounts and services.[1] Accordingly, the Federal Reserve's proposal should be amended to comply with this new law. The law requires at least three significant revisions. First, the Board proposed disclosure of "depository institutions" with access to Federal Reserve accounts and services. In contrast, the law requires disclosure of "every entity that currently has access to a reserve bank master account and services." This means, for example, that the Board should include disclosures for non-depository trust companies with access to Federal Reserve accounts.[2] Second, the Board's proposal requested comments about whether Reserve

[1] James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. Law No. 117-263 tit. LVII, § 5708 (2022) (to be codified at 12 U.S.C. § 248c).

[2] Section 13 of the Federal Reserve Act authorizes the Reserve Banks to provide accounts to member banks, depository institutions, nonmember banks, and trust companies. 12 U.S.C. § 342.

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Banks "should publish a list of institutions that have requested an account or access to services." Congress has now answered that question by requiring that the Federal Reserve disclose "every entity that submits an access request for a reserve bank master account and services." Third, the Board proposed that the information be disclosed through "a sortable list posted to a Federal Reserve public website." The law now requires "a public, online, and searchable database."

Beyond bringing the disclosure proposal into compliance with the law, the Board should consider more robust disclosures that would provide transparency and more closely align the disclosures with the Board's existing framework for account and services requests.

First, the Board's proposal contemplates disclosure of two data elements: "(1) institution name, and (2) the Reserve Bank district in which the institution is located." Because many banks have similar names, identifying financial institutions this way could cause confusion. Other federal financial institutions databases provide more information. For example, the Federal Reserve's Fedwire Participants database lists the financial institution name, location, and ABA routing number. The Federal Financial Institutions Examination Council's database provides each institution's name, location, FDIC certificate number, and ABA routing number. Accordingly, the Federal Reserve should consider providing location and routing number information for entities with existing accounts or services. Institutions that are newly requesting services may not yet have an ABA routing number. These institutions could be identified by some other unique number.

Second, the Board proposed to identify which entities are federally insured and which entities are not federally insured. While these distinctions are important, the Board's Account Access Guidelines separate financial institutions into three distinct tiers—one for federally insured institutions, one for institutions without federal insurance but with a federal prudential regulator and Federal Reserve holding company oversight, and one for other institutions. The Board thought these distinctions so important that it established different levels of scrutiny for institutions in each tier. The Board should be transparent about the level of scrutiny it applies to each entity. Such disclosures would be consistent with the new law, which requires disclosure of "the type of entity . . . including whether such entity is" federally insured.

Third, the Board's proposal states its "proposed list would include all institutions that access Reserve Bank priced financial services directly via a master account and those that access services indirectly via a master account of its correspondent bank." It is laudable that the Federal Reserve planned to disclose both types of access, but the disclosures should distinguish between those entities that have master accounts and those that do not. Access to payment services through a master account is not equivalent to access through a correspondent. For example, the Federal Reserve requires that Fedwire transactions settle in an institution's own master account. In addition, the Federal Reserve expects that correspondents conduct their own risk-vetting of respondents. Consequently, the information disclosed should identify which institutions have their own master accounts and which institutions access accounts and services through correspondents. For institutions that have a master account but use a correspondent for some settlement services, the Federal Reserve should identify which payment services are settled through a correspondent's master account.

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Fourth, the Board's proposal does not seem to contemplate providing any explanation of decisions to deny account or services requests. The Board's existing Guidelines acknowledge that some account and services decisions have implications beyond the individual institution.[3] Suppose, for example, the Federal Reserve Board and Reserve Banks decided to deny an account request for a narrow bank because they believe that it or any narrow bank would interfere with the Fed's implementation of monetary policy.[4] If the Federal Reserve provides no public explanation of that decision, the public will have no way of knowing whether the application was denied for individual factors (e.g., inadequate capital, inexperienced management) or because the Federal Reserve believes narrow banks in general would be harmful. In the absence information, future narrow banks might spend significant time and resources inefficiently traveling the same unproductive path. Moreover, without information, observers will have difficulty determining whether account and service access decisions are consistent over time and across Reserve Bank districts. Accordingly, when a Reserve Bank denies an account or service request, the Reserve Bank should provide a short explanation of the reason(s) for the denial.

Some may worry that if the Federal Reserve provides public reasons for its denial of accounts and services, some institutions will suffer reputational harm. The Board "believes that, to the greatest extend possible, the Account Access Guidelines should not discourage institutions from requesting access to accounts and services by subjecting requestors to the potential disclosure of risk of reputational harm." In my opinion, the reputational risk to an applicant should not outweigh the public benefits that would come from disclosure. In other contexts, bank supervisors disclose decisions even though those decisions might pose reputational harm. For example, when the OCC denies an application to buy a bank, it might reflect negatively on the company requesting the acquisition. But this does not stop the OCC from disclosing the decision. The risk of some reputation harm should be viewed as one of the risks of requesting a Federal Reserve account or services.

Once again, I think the Board's proposal is an important step toward transparency. I appreciate the opportunity to comment on the account and services disclosures. If you have further questions, I can be reached at jhill@law.ua.edu.

With best regards,

Julie Andersen Hill

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[3] A Reserve Bank must consult with other Reserve Banks and the Board when "the access to an account and services by an institution itself or a group of like institutions could introduce financial stability risk to the U.S. financial system." A similar consultation must occur when "access to an account and services by an institution itself or a group of like institutions could have an effect on the implementation of monetary policy."

[4] This is just a hypothetical posed by a law professor. I make no claims about whether such a decision would be legally or factually justified.